

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

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**IN RE: BLUE CROSS  
BLUE SHIELD  
ANTITRUST LITIGATION  
(MDL NO. 2406)**

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**Master File No. 2:13-CV-20000-RDP**  
  
**This document relates to  
All Cases**

**PROVIDER PLAINTIFFS' PROPOSED LANGUAGE FOR INCLUSION IN THE  
SUBSCRIBER SETTLEMENT PRELIMINARY AND FINAL APPROVAL ORDERS**

At the preliminary approval hearing on the Subscribers' Settlement, the parties to that settlement confirmed that it would have no effect on the Provider Plaintiffs' case or claims:

THE COURT: Mr. Boies, what do you say the effect of this settlement would be on the providers' claims?

MR. BOIES: We don't believe that this has any effect on the providers' claims. The providers are not parties to the settlement. They did not participate in the settlement. And our view is that this has no effect on their case.

THE COURT: All right. How about from the Blues' standpoint? Mr. Zott or Mr. Laytin, agree with that characterization?

MR. ZOTT: Yes. Your honor, David Zott on behalf of the Association. Yeah. We agree that it does not impact the provider claims in their capacity as providers.

Tr. at 55. Professor Issacharoff then suggested that the Provider Plaintiffs submit proposed language for the Preliminary and Final Approval Orders confirming what the settling parties had told the Court. Tr. at 61.

Consistent with the procedure that the Court outlined at page 61 of the transcript, Provider Plaintiffs prepared the following language for inclusion in the two Orders:

### **SUBSCRIBER SETTLEMENT INSERTS**

**To be added between Paragraphs 33 and 34 in the Preliminary Approval Order and between Paragraphs 28 and 29 in the Final Approval Order:**

Inapplicability of Settlement to Provider Track Cases

Nothing herein shall apply to the Providers' claims brought in their capacity as Providers of healthcare products or services in MDL No. 2406.

**To be added at the end of Paragraph 21 of the Final Approval Order:**

This finding has no applicability to the Providers' claims brought in their capacity as Providers of healthcare products or services in MDL No. 2406.

Provider Plaintiffs' Counsel first submitted the proposed language to Subscriber Plaintiffs' Counsel, who had no objection to the language which merely confirmed the statements made to the Court by all parties. The Subscriber Plaintiffs' Counsel prepared redlined versions of the two Orders including that language. The redlined Preliminary Approval Order is Exhibit A and the redlined Final Approval Order is Exhibit B.

Provider Plaintiffs then provided the redlined Orders to the Defendants, who have not yet responded to Provider Plaintiffs.

Provider Plaintiffs request that the Court include the requested language in any Preliminary and Final Approval Orders, to confirm the statements made by all settling parties to the Court at the Preliminary Approval Hearing.

Respectfully submitted the 23rd day of November, 2020.

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